IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No. 462 of 2005

Suresh Yeshwant Raykar.. petitioner
vs
State of Mah & anr..Respondents

Mr S U Marne for petitioner
Mr. P M Patil AGP for State

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 20.6.2005

P.C:

. Rule. Mr. P.M Patil, learned AGP waives service for respondents. By consent, rule is made returnable forthwith.

2. In this petition the petitioner seeks to challenge the judgment and order of the Maharashtra Administrative Tribunal rejecting the claim of the petitioner for interest on delayed payment of pension, gratuity and commuted value.

3. The petitioner was initially appointed as Overseer and was later on promoted to the post of Dy Engineer. He was sent on deputation to Zilla Parishad Beed and then to Zilla Parishad, Osmanabad from where he retired on attaining the age of

superannuation on 3l.3.l997. The petitioner was paid provisional pension for the period April l997 to September l997 in April l998 i.e. one year after his retirement. The pension in respect of next six months i.e.October l997 to March l998 was paid in October l998. The amount of gratuity was paid in March l998, group insurance amount in July l999, and commuted value of pension in March 2000. The regular pension was granted only from December 2000. Thus there was gross delay in payment of monthly pension as well as other retiral benefits. The petitioner, therefore, approached the tribunal seeking interest on delayed payment of pension and other benefits. The tribunal by the impugned order rejected the claim of the petitioner on the ground that the dela in payment cannot be said to be due to administrative reasons and that the petitioner had contributed to the delay. The tribunal,however, allowed the claim for interest on difference in pension and gratuity consequent upon revision of pay and pension.

4. We have heard Mr. Marne, learned counsel for the petitioner, and Mr. P. M Patil, learned AGP for the respondents. In our opinion it is impossile to sustain the order of the tribunal.

There is no dispute that no departmental inquiry was pending against the petitioner at the time of his retirement and, therefore, there was no reason for the respondents to pay provisional pension to the petitioner. Before the tribunal the respondents gave number of excuses to some how explain the delay. However, the only factor which weighed with the tribunal to deny the interest was that there were dues of house rent which the petitioner paid in September 2000 because of which "No due certificate" could not be obtained in time. However the real reason for delay can be seen from the order dated 4.8.l998 passed by the Chief Executive Officer Zilla Parishad Osmanabad. In the said order it is clearly mentioned that the provisional pension was being sanctioned because the case of the petitioner was pending for verification of pay fixation with the Accounts Officer, Aurangabad. The non payment of house rent by the petitioner was not the actual reason for delay is further substantiated by the fact that the petitioner was paid the amount of gratuity, commuted value and group insurance prior to the payment of the said dues of house rent by the petitioner. It is pertinent to note that prior to September 2000 the petitioner was not even called

upon to pay the arrears of house rent. In the case of Union of India vs Madan Mohan Prasad (2002(2) SC Service Law Judgements, 74 the Supreme Court has categorically held that even for non vacation of the quarters employee's gratuity cannot be withheld. In any event it was not open for the respondents to withhold pensionary benefits because a small amount was due from the petitioner towards the house rent. It is seen from the record that the State Government was corresponding with the Zilla Parishad for submission of no enquiry certificate and no inquiry certificate was issued by Zilla Parishad only on 30.l.200l. Under the circumstances we find absolutely no justification for the inordinate delay in payment of pensionary benefits to the petitioner. Under the relevant rules the pensionary benefits are required to be cleared within six months. Therefore the petitioner will be entitled to interest from the date of expiry of six months after superannuation i.e. from l.l0.l997. We direct the respondents to pay to the petitioner interest at the rate of 9% p.a. on delayed payments of pension, gratuity and commuted value within a period of 3 months from today. Rule is made absolute accordingly with no order as to costs.